

FILED

FEB 16 2006

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

PEDRO CHAVEZ GARCIA,

Defendant - Appellant.

No. 05-50495

D.C. No. CR-04-02112-MLF

MEMORANDUM^{*}

Appeal from the United States District Court
for the Southern District of California
Marilyn L. Huff, District Judge, Presiding

Submitted February 13, 2006^{**}

Before: FERNANDEZ, RYMER, and BYBEE, Circuit Judges.

Pedro Chavez-Garcia appeals the sentence imposed following his guilty plea conviction for deported alien found in the United States, in violation of 8 U.S.C. § 1326.

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Chavez-Garcia contends that the district court violated his constitutional rights in enhancing his sentence under 8 U.S.C. § 1326(b) and § 2L1.2(b)(i) of the advisory Sentencing Guidelines based on a prior criminal conviction that was neither proved beyond a reasonable doubt to a jury nor admitted as part of the guilty plea. Chavez-Garcia's contention is foreclosed by this Circuit's case law. *See United States v. Delaney*, 427 F.3d 1224 1226 (9th Cir. 2005) (holding that the fact of a prior conviction for sentencing purposes need not be proved to a jury or admitted by defendant to satisfy the Sixth Amendment); *United States v. Moreno-Hernandez*, 419 F.3d 906, 914 n.8 (9th Cir. 2005) (explaining that a district judge's enhancement of a sentence, based on the fact of a prior conviction under U.S.S.G. § 2L1.2, does not raise any Sixth Amendment problems); *United States v. Weiland*, 420 F.3d 1062, 1079 n. 16 (9th Cir. 2005) (holding that we are bound to follow *Almendarez-Torres v. United States*, 523 U.S. 224, 118 S. Ct. 1219, 140 L. Ed.2d 350 (1998), even though it has been called into question, unless it is explicitly overruled by the Supreme Court).

AFFIRMED.